IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.408 OF 2006

Shantabai Waman Deshpande ...Appellant

vs.

Vilas Hari Chambar @ Pandav
(since deceased through L.Rs.)
1a.Bebitai w/o Vilas Chambhar and Ors. ...Respondents

Mr.N.V.Bandiwadekar for the Appellant
Mr.N.J.Patil for Respondent Nos.1a to 1B and Respondent Nos.2 to 4

CORAM: A.S.OKA,J.
DATE : JULY 16, 2007.

P.C.:

1. Heard Advocates for the parties. The Appellant is the original defendant. The Respondents filed a suit for declaration and injunction in respect of the land bearing Revision Survey No.386 Hissa No.2 (Gat No.1168 Hissa No.1) and the land bearing Revision Survey No.400 (Gat No.1168 Hissa No.2). The trial court decreed the suit by passing the following order :

"1. The suit is decreed with costs.

2. The defendant is hereby perpetually restrained from obstructing peaceful possession and ownership of the plaintiffs over Gat No.1168/2 area twenty six gunthas and over Revisional Survey No.386/2 which is corresponding to one acre twenty gunthas in Gat

no.1168/1-B situated at village Hatkanangale District Kolhapur either by herself or through her agents.

3. Decree be drawn accordingly."

An appeal was preferred by the present Appellant which has been dismissed by the Appellate Court by confirming the decree of the trial court.

3. Shri Bandiwadekar for the Appellant has invited my attention to the various documents including the mutation entry No.683 made on 25th September 1979 and consequent change effected in 7/12 extracts. He submitted that on the basis of the mutation entry No.683, the revenue record shows that the Respondents are in possession of the area of only 20 gunthas, out of the land bearing Survey No.386/2 (Gat No.1168/1). He also pointed out that the orders passed in the proceedings under the Bombay Tenancy and Agricultural Lands Act,1948 which show that the Appellant was put in possession of the area of land of 2 acres and 7 gunthas. He submitted that right from the year 1978, the revenue record shows that the Respondents are in possession of the area of only 20 gunthas. As a result, on the basis of the decree passed by the trial court, the settled possession of the Appellant over the area of 2 acres and 7 gunthas is likely to be disturbed. He submitted

that considering the consistent revenue record from the year 1978, the trial court committed an error by passing a decree by protecting the possession of the Respondents over the area of land of 1 acre and 20 gunthas. He submitted that the revenue record and the mutation entry made in the year 1978 were never challenged by the Respondents. He submitted that even assuming that the trial court was right, possession of the Appellant over the area of 2 acres and 7 gunthas deserves to be protected.

4. I have considered the submissions. It is not in dispute that the predecessor of the Respondents was an agricultural tenant in respect of the land bearing survey No.386/2. By order dated 3rd October 1974 passed by the Agricultural Lands Tribunal under the Bombay Tenancy and Agricultural Lands Act,1948, the sale of area of 2 acres and 7 gunthas out of Survey No.386/2 in favour of the predecessor of the Respondents was declared ineffective. On the basis of the said order, a further order was made on 28th December 1974 under section 32-P of the said Act of 1948 by which the order of surrender was passed in respect of the area of 2 acres and 7 gunthas in favour of the Appellant. The possession receipt on record discloses that the area of 2 acres and 7 gunthas on the western side of the property bearing survey No.386/2 was handed over to the Appellant. The order dated 3rd October 1974 also shows that the predecessor of the Respondents

purchased area of 1 acre 20 gunthas which is the eastern part of survey No.386/2.

5. Thus, the order under the Bombay Tenancy and Agricultural Lands Act,1948 which has attained the finality clearly shows that the Appellant resumed the possession of 2 acres and 7 gunthas which is more particularly described in possession receipt and the predecessor of the Respondents was allowed to purchase the area of land of 1 acre and 20 gunthas.

6. Only on the basis of the subsequent mutation entry, it cannot be accepted that the area of land in possession of the Respondents is only 20 gunthas. The revenue record cannot be contrary to the orders passed by the Authorities under the said Act of 1948. There is no order passed by any authority to show that possession of area of 1 acre was taken from the Respondents or their predecessor.

7. In view of the aforesaid position, no fault can be found with the decree of perpetual injunction passed by the trial court in respect of the area of 1 acre and 20 gunthas and confirmation thereof by the Appellate Court. It must be stated here that both the courts have noted that the Appellant was put in possession of the area of land of 2 acres and 7 gunthas.

8. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

JUDGE